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April 7, 1994

Mr. Peter Sausen
Assistant Commissioner
of Finance
MN Department of Finance
400 Centennial Office Building
658 Cedar Street, 4th Floor
St. Paul, MN 55155

Re: Use of State Bond Proceeds to Make
Tax Equivalent Payments

Dear Mr. Sausen:

You advise us that legislation has been proposed which provides for the issuance of state general obligation bonds authorized by the legislature pursuant to the Minnesota Constitution, Article XI, Section 5, clause (a), the proceeds of which are appropriated to the commissioner of natural resources to make a grant to the Metropolitan Council for acquisition of regional recreation open space in accordance with the Council's policy plan, pursuant to Minnesota Statutes, Sections 473.301 to 473.351. Section 473.341 requires the Council to pay to the local government unit where the regional recreation open space to be acquired is located, declining amounts of tax equivalents over a five year period with respect to the property being acquired. The last sentence of Section 473.341 provides that "all amounts paid pursuant to this section are costs of acquisition of the property with respect to which they are paid." You ask whether state bond proceeds granted to the Council can be used to make the tax equivalent payments.

Under Article XI, Section 5, clause (a) of the Constitution bonds may be issued "to acquire and to better public land and buildings and other public improvements of a capital nature and to provide money to be appropriated or loaned to any agency or political subdivision of the state for such purposes. . . ." Therefore, the tax equivalent payments must constitute costs of acquisition if they are to be paid from state bond proceeds. As noted above, Section 473.341, characterizes the tax equivalent payments as "costs of acquisition," but is not dispositive of the question whether they are costs of acquisition under Article XI, Section 5, clause (a). While the

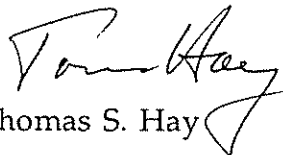
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legislature may from a policy standpoint consider such payments as a cost which should be paid by the state with respect to acquisition of regional recreation open space, costs of acquisition as commonly understood would include only the actual cost of the land and legal and other out-of-pocket costs necessarily incurred to complete an acquisition; they would not include tax equivalent payments. Presumably the property being acquired is not owned by the local government unit to which the tax equivalent payments are to be made, and the tax equivalent payments when made will be used for general fund purposes, not to acquire parks or other capital assets for the local government unit.

In view of the foregoing, and given the high degree of certainty as to the legality of proposed expenditures of bond proceeds that is required for bond counsel to issue an opinion approving the issuance of bonds to finance them, absent a court decision approving the legality of the expenditure of bond proceeds for tax equivalent payments, we would not be able to issue an opinion approving the issuance of state bonds for this purpose.

Very truly yours,


Thomas S. Hay

TSH/pmh